

Editor's note: See also Gus Panos, 21 IBLA 163, July 21, 1975.

TIFFANY TRUST

IBLA 75-461

Decided July 21, 1975

Appeal from decision of New Mexico State Office, Bureau of Land Management, cancelling noncompetitive oil and gas lease for violation of 43 CFR 3112.5-2. NM 24445.

Set aside and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Assignments or Transfers

Where an oil and gas lease may be subject to cancellation, but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, action to cancel the lease will be stayed until it is determined whether the assignee is, in fact, entitled to protection of the statute and regulations afforded to bona fide purchasers.

APPEARANCES: H. Byron Mock, Esq., Mock, Shearer & Carling, Salt Lake City, Utah, for appellant and for intervenor, Panos Investment Company; Robert H. Thomas, Esq., Midland, Texas, for intervenor Gulf Oil Corp.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Tiffany Trust, by Gus G. Panos, Trustee, has appealed from the New Mexico State Office, Bureau of Land Management, decision dated April 4, 1975, which "cancelled" its noncompetitive oil and gas lease NM 24445, issued effective April 1, 1975, for alleged violation of 43 CFR 3112.5-2, which prohibits multiple filings of lease offers for the same lands in any scheme which would give any party a greater probability of successfully obtaining a lease. The decision asserted that other drawing entry cards for the same parcel were submitted by Gus G. Panos as Trustee for two other trusts.

The cited regulation provides, pertinently:

§ 3112.5-2 Multiple filings.

When any person, association, corporation, or any other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. * * * Should any such offer be given a priority as a result of such drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3102.1-2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

The record shows that the drawing entry card of Tiffany Trust, Gus G. Panos, Trustee, filed by him and certified by him that the Trust was the sole party in interest in the offer, was drawn first for Parcel 414 in the December 1974 simultaneous filing procedure in the New Mexico State Office. Following notification that the Trust was the successful drawee, payment of the first year's rental was submitted, and on March 3, 1975, lease NM 24445 was issued to the Trust effective April 1, 1975. Thereafter, two instruments effecting assignment of record title to this lease were filed in the State Office for approval: one assignment, executed March 12, 1975, and filed for approval March 19, ran from Tiffany Trust, Gus Panos, Trustee, to Panos Investment Company (PIC), reserving no overriding royalty to the assignor; the second assignment, executed March 14, 1975, and filed for approval April 24, ran from PIC to Gulf Oil Corporation, reserving 4 percent overriding royalty to PIC. No action looking toward approval of the first assignment was taken by the State Office prior to the decision of April 4, 1975, purporting to cancel the lease. The decision made no mention of the pending assignment, nor does it appear that the assignee was served with the decision.

Both assignees, PIC and Gulf, have intervened in this appeal, each asserting that it is a bona fide purchaser for value of the assignment and thus entitled to the protection afforded by the Mineral Leasing Act, as amended, 30 U.S.C. §§ 184 (h)(2) and (i) (1970), and that opportunity had not been given to present its case in support of the claim to be a bona fide purchaser. Appellant similarly asserts it assigned the lease to a bona fide purchaser.

Assuming, without deciding, that the State Office was correct in its interpretation that the filings of several Trusts by Gus G. Panos, Trustee, were in violation of 43 CFR 3112.5-2, the decision to cancel lease NM 24445 ignored the possible rights, under 30 U.S.C. §§ 184(h)(2) and (i), of the assignees whose assignments had been filed for approval.

[1] In considering whether an assignee of an oil and gas lease was a bona fide purchaser provisions of the Mineral Leasing Act, as amended, supra, the basic question is whether he in good faith and for value acquired his interest without notice that the lease was subject to cancellation. Southwestern Petroleum Corporation, 71 I.D. 206, 213 (1964); aff'd, Southwestern Petroleum Corporation v. Udall, 361 F.2d 650 (10th Cir. 1966). If the assignment to the ultimate assignee is regular in all respects and Gulf demonstrates it was a bona fide purchaser thereof, Gulf must be afforded the opportunity to take advantage of the statute and regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is set aside and the case is remanded for further action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

